

IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA,  
NORTHERN DIVISION

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THOMAS G. B. J. A.  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

R.C., by his next friend,  
the ALABAMA DISABILITIES  
ADVOCACY PROGRAM, on behalf  
of himself and those  
similarly situated,

Plaintiffs,

vs.

ANDY HORNSBY, Commissioner  
of the Alabama Department  
of Human Resources,

Defendant.

Civil Action  
No. 88-H-1170-N

CONSENT DECREE

I. Introduction.

The parties have consented to the entry of this decree as an order and judgment of the Court. By virtue of the parties' consent, it is unnecessary to have a trial on the liability issues in this case.

The parties' agreement to entry of this decree is the outcome of negotiations and bargaining. Both the plaintiffs and the defendant have made concessions that they believed were unnecessary in light of prevailing law and the facts of this case. Likewise, both plaintiffs and the defendant have obtained concessions they might not have obtained from this Court.<sup>1</sup>

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<sup>1</sup> In other words, each party has given up some things to which the party believed himself entitled or which the party believed he might have achieved through further litigation; and each party has been able to obtain favorable outcomes that might have been beyond his reach if the case had been decided by the Court instead of resolved through negotiations.

In agreeing to the entry of this decree, the parties hope and intend to transform the operations of Alabama's child protective services and foster care systems by altering their operating principles and increasing their professionalization. The decree emphasizes the prevention of placement, early intervention, family reunification, delivery of services in home-based and community-based settings, and child and parent involvement in planning and delivering services. Its implementation requires initiatives in the areas of service development, training, quality assurance, and rights protection.

Instead of specifying the precise means for accomplishing these ends, the decree lays out a set of "operating principles" or "standards" and directs defendant to ensure that the Alabama Department of Human Resources' child protective services and foster care systems comply with these principles or standards by a date certain. Defendant maintains full operating authority over DHR and has broad discretion to devise the means by which to achieve compliance, so long as the requirements of this decree are met.

Also, the parties' agreement contemplates the development of a comprehensive array of services for class members over a period of seven years. Implementation will be phased according to an express timetable in a manner designed to maximize the benefits - - fiscal and otherwise -- the defendant expects to reap from greater emphasis on placement prevention and early intervention as means of resolving the problems identified in plaintiffs'

complaint.

The decree requires that, by October 1, 1992, DHR develop an implementation plan, acceptable to both parties, with the assistance of consultants recommended by the Florida Research and Training Center for Improved Services for Seriously Emotionally Disturbed Children in Tampa, Florida, and the Center for the Study of Social Policy in Washington, D.C.,<sup>2</sup> or others mutually agreed upon by the parties. It also requires the parties to negotiate the process by which the plan will be developed.

To minimize cost to the state and to maximize the effectiveness of new capacity, the decree calls for a sizeable investment in planning before implementation begins. New concepts and capabilities are to be piloted before going "on-line". The decree aims to achieve implementation in as cost-effective a manner as possible.

A major portion of the funds needed to finance reforms can be obtained through existing sources, including reallocation of existing spending,<sup>3</sup> federal funds,<sup>4</sup> and funds for implementation of new legislative requirements concerning "multiple needs"

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<sup>2</sup> The consultants recommended may be employees or contractors of either or both Centers.

<sup>3</sup> For example, by shifting money from foster care services to placement prevention.

<sup>4</sup> For example, through the SSI, Title IV-A emergency assistance, Title IV-E, and Title XIX programs (all provided for in the Social Security Act). The SSI program is totally federally supported. The other programs provide approximately \$3 in federal money for each \$1 contributed by the state.

children.<sup>5</sup> However, a sizeable increase in state appropriations to DHR will also be required, beginning in Fiscal Year 1993<sup>6</sup>.

II. Disclaimer of Liability.

1. By agreeing to the entry of this decree, defendant does not acknowledge or admit that DHR is in any way in violation of the U.S. Constitution or any federal statute.

III. Rationale.

The parties are of the opinion that:

2. The number of class members removed from their homes could be reduced by at least one-third through appropriate interventions (including the provision of intensive home-based services).<sup>7</sup>

3. A great many class members in foster care could be reunited with their families through the provision of appropriate services.

4. The placement of class members in expensive treatment facilities and institutions could be significantly reduced through the provision of appropriate home-based and community based services.

5. A great many class members could achieve permanency in

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<sup>5</sup> Alabama Code §12-15-71(h) (1975).

<sup>6</sup> Alabama's fiscal years begin on October 1 and end on September 30. FY 1993 begins October 1, 1992.

<sup>7</sup> A recent study by DHR indicates that as many as 45% of all admissions into foster care could be avoided through the provision of appropriate services. Also, each year approximately 1,000 children are placed in foster care for less than a month's time; most of these admissions could be avoided through appropriate interventions.

their living situations, achieve success in school, and become stable, gainfully employed adults if provided appropriate services.

6. The reforms incorporated in this decree are designed to achieve these improvements, among others. These reforms will help prevent serious harm to many class members. In many cases, they will also save the state considerable money.

#### IV. The Plaintiff Class.

7. The "plaintiff class" is all children who are now, or in the future will be, children in foster care and/or DHR custody who have emotional or behavioral disorders. The class consists of the following children:<sup>8</sup>

a. Children with severe emotional or behavioral problems who are in foster care and/or DHR custody, or who are at imminent risk of placement into foster care and/or DHR custody. DHR shall promulgate a definition, acceptable to the parties, of

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<sup>8</sup> Regarding children who have been adjudicated a "Child in Need of Supervision" ("CHINS"), see Alabama Code §12-15-1(4) (1975), or who exhibit behaviors characteristic of CHINS:

a. Children who have been adjudicated CHINS and placed in DHR custody are members of the plaintiff class.

b. Children who have been adjudicated CHINS or who exhibit behaviors characteristic of CHINS are considered, under this decree, to have "emotional or behavioral problems".

c. Children who have been adjudicated CHINS or who exhibit behaviors characteristic of CHINS may be among children "who are at imminent risk of placement into foster care and/or DHR custody." If so, they should receive services to prevent their placement.

However, it is not the intent of this decree to encourage state courts to declare children "dependent", see Alabama Code §12-15-1(10) (1975), merely because they are CHINS or exhibit behavior characteristic of CHINS.

"severe emotional or behavioral problems". The definition shall be within the "parameters" that have been formulated by the CASSP program of the National Institute of Mental Health.<sup>9</sup>

b. Children with moderate or mild emotional or behavioral problems who are in foster care and/or DHR custody, or who are at imminent risk of placement into foster care and/or DHR custody. Children who meet any of the descriptions in paragraphs 1-6 of the Supplemental Recommendation of the Magistrate Concerning Class Certification, filed May 15, 1990,<sup>10</sup> and who do

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<sup>9</sup> CASSP, the Child and Adolescent Service System Program of the National Institute of Mental Health, was launched in 1984 to assist states and communities to develop comprehensive, home-based and community-based systems of care for emotionally disturbed youth and their families. The "parameters" referred to are discussed at pages 7-9 of Stroul & Friedman, A System of Care for Severely Emotionally Disturbed Children and Youth (Georgetown University, CASSP Technical Assistance Center: 1986).

<sup>10</sup> The descriptions in paragraphs 1-6 of the Supplemental Recommendation of the Magistrate Concerning Class Certification are:

- (1) The child has been diagnosed as being emotionally disturbed or as having a behavioral disorder;
- (2) Although the child has not been formally diagnosed emotionally disturbed, DHR or the facility in which the child resides considers the child to be emotionally disturbed;
- (3) The child has been adjudicated a delinquent;
- (4) The child is receiving special education as an EC ("emotionally conflicted") child;
- (5) The child is residing in any of the facilities listed in Exhibit A to this order; or
- (6) Although not formally diagnosed as having a behavioral disorder, the child is considered to have a behavior disorder by DHR or the facility in which the child resides. A child has a "behavior disorder" if DHR or the facility considers the child to fit any one of the following descriptions:

- (i) the child has persistent behavior problems; (ii) the child commits significant rule infractions; (iii) the child persistently absents himself from his placement without permission or runs away; (iv) the child commits

not have severe emotional or behavioral problems, shall be considered "children with moderate or mild emotional or behavioral problems".

c. Children who are at high risk of developing emotional or behavioral problems and who are at imminent risk of placement into foster care and/or DHR custody. Defendant shall develop a definition, acceptable to the parties, of which children at imminent risk of placement are "at high risk of developing emotional or behavioral problems." While the defendant shall have broad discretion to develop and modify the definition, approximately 35% of all children at imminent risk of placement shall be deemed to be "at high risk of developing emotional or behavioral problems." Defendant shall consider including in the definition of those "at high risk" children who have previously been admitted to foster care and/or DHR custody.

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actions that if committed by adults would be crimes; (v) the child engages in aggressive behavior that places the child or others at risk of injury; (vi) the child engages in self-injurious behavior; (vii) the child is residing in a facility operated or certified by the Alabama Department of Mental Health and Mental Retardation, and the child has been placed in the facility for reasons other than the child's mental retardation; (viii) the child is residing in a facility operated or licensed by the Alabama Department of Youth Services; or (ix) the child has been identified by DHR as having behavior problems. Such children may be emotionally disturbed, mentally retarded, or otherwise developmentally disabled. On the other hand, they may suffer from no handicap other than their behavior disorder.

"Exhibit A", referred to in paragraph 5 of the Supplemental Recommendation, is attached as Appendix A to this decree.

V. Definitions.

The following definitions apply to this decree and to related documents.

8. A "child care institution" is defined at Alabama Code §38-7-2(4) (1975).

9. "Class members" means each and every member of the plaintiff class.

10. "Community aides" are volunteer or paid staff from the same community and culture as the client, including volunteers or paid staff who have themselves been recipients of services.

11. "Disruption" means an unplanned change in placement.

12. "Family setting" means a class member's own home, the home of a relative, a foster home, or a therapeutic foster home. It does not include a group foster home.

13. A child is in "foster care" if (a) the child is residing outside of his home and (b) any one of the following other conditions is met: (i) the child is in temporary protective custody, temporary custody, or permanent custody of DHR, (ii) the child is the subject of a voluntary placement agreement, or (iii) the child was in DHR custody immediately prior to the child's entry into an institution and the plan is for the child to return to DHR custody upon discharge.<sup>11</sup> The fact that a child is

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<sup>11</sup> This definition is for purposes of this decree only. The definition is not meant to alter state law understandings of the meaning of "foster care". Nor is it meant to alter how the term "foster care" is understood for purposes of federal audits of Alabama's Title IV-B and Title V-E programs.



residing in a placement or institution operated or licensed by DMH/MR and/or DYS does not disqualify the child from being in "foster care".

14. Children in "foster care and/or DHR custody" includes: children who are voluntarily placed; children in the temporary protective custody, temporary custody, or permanent custody of DHR; children in DHR custody who live at home or with relatives; and children residing in institutions operated by the Department of Mental Health and Mental Retardation ("DMH/MR") or the Department of Youth Services ("DYS") who, prior to their entry into the institution, were in foster care and/or DHR custody and for whom the plan is to return to foster care and/or DHR custody upon their discharge from the institution.

15. A "foster home" is defined at Alabama Code §38-7-3(10) (1975).

16. "Foster parent" means the responsible adult or adults caring for a class member in an out-of-home family setting. "Foster parent" includes a foster parent in a therapeutic foster home and the responsible adults in a relative placement. It does not include a natural or adoptive parent.

17. The "goal" for the child is the permanent living situation that the child's case plan is designed to achieve.<sup>12</sup> Possible goals are: remaining at home or with a relative; returning the child home; placing the child with a relative;

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<sup>12</sup> DHR currently refers to the "goal" for the child as the child's "permanent plan".

adoption; independent living; and longterm foster care.

18. A "group home" is defined at Alabama Code §38-7-3(9) (1975).

19. A "group foster home" is a staffed foster home in which five or fewer children live. It is distinct from a foster home with the same number of children. A "group foster home" is the creation of a public or private service provider; the staff of the "group foster home" do not consider it their own home or the home of their family. By contrast, a foster home is a "real" home into which foster children are placed. The foster parents are not "staff"; the foster home is their actual home.

20. The "Implementation Plan" is the plan required by paragraphs 64-68 of this decree.

21. An "institution" means a psychiatric hospital, a psychiatric ward of a general hospital, any facility operated by DMH/MR or by DYS, or a detention facility. It does not include a child care institution, group home, group foster home, or foster home (including a therapeutic foster home) or other similar placement.

22. "Live with their families" means to live at home and, when that cannot be achieved through the provision of services (including intensive, home-based services),<sup>13</sup> to live with a

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<sup>13</sup> The characteristics of intensive home-based services are described in, among other works: Stroul, Volume I: Home-Based Services, Series on Community-Based Services for Children and Adolescents who are Severely Emotionally Disturbed (Georgetown University, CASSP Technical Assistance Center: 1988); Edna McConnell Clark Foundation, Keeping Families Together: The Case for Family Preservation 7-13 (1985) (referring to intensive home-based